petually enjoining collection of a purchase-money note for $700, given under a contract to buy land for that price, the note to be paid in full if pending ejectment action against grantor terminated favorably to him, but $350 to be paid in any event, was erroneous, but it should provide for the payment of the latter sum and enjoin enforcement of claim for the balance until further order of court.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. § 409; Dec. Dig. § 189.* 7 Va.-W. Va. Enc. Dig. 592.]

Appeal from Circuit Court, Smyth County.

Suit in equity by Taylor & Haynes against Mary E. Weekley to enjoin the prosecution of an action, with cross-bill by defendant. Decree for complainant, and defendant appeals. Reversed, and decree entered which the lower court should have entered, and cause remanded.

L. P. Summers, of Abingdon, for appellant.

White, Penn & Penn and *Hutton & Hutton,* all of Abingdon, for appellees.

CHESAPEAKE & O. RY. CO. *v.* TINSLEY.

Sept. 11, 1916.

[89 S. E. 860.]

1. Appeal and Error (§ 1002*)—Review—Question of Fact—Verdict.—Court of Appeals cannot deal with the weight of the evidence or the credibilty of the witnesses, and a verdict upon conflicting evidence cannot be disturbed where there is evidence to suport it.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.* 1 Va.-W. Va. Enc. Dig. 605.]

2. Carriers (§ 347 (9)*)—Personal Injury—Question for Jury—Contributory Negligence.—Evidence in an action for damages for personal injury while alighting from defendant's train, by reason of the distance from the step to the ground, held to make the plaintiff's contributory negligence a question for the jury.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1385, 1402; Dec. Dig. § 347 (9).* 2 Va.-W. Va. Enc. Dig. 709.]

3. Trial (§ 296 (4, 5)*)—Personal Injury—Instruction—Contributory Negligence.—In an action for damages for personal injury while alighting from train, an instruction that, when a passenger is expressly or impliedly invited to alight at his station, and there is any danger in alighting there, the carrier's agents and servants must warn the passenger of such danger, and that otherwise the passenger may assume that the place of alighting is safe, when read with an instruction that, if plaintiff in the exercise of reasonable care could have

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

alighted without injury and by want of due care contributed to her injury, the carrier was not liable, notwithstanding the car stopped away from the station platform, was not reversible error, as authorizing a passenger to disregard dangers, whether obvious or not.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 709; Dec. Dig. § 296 (4, 5).* 2 Va.-W. Va. Enc. Dig. 721.]

Error to Circuit Court, Bedford County.

Action by Eliza E. Tinsley against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Harrison & Long, of Lynchburg, for plaintiff in error.

Jno. L. Lee, of Lynchburg, and *W. K. Allen,* of Amherst, for defendant in error.

LOUISVILLE & N. R. CO. *v.* O'NEIL.

Sept. 11, 1916.

[89 S. E. 862.]

1. Railroads (§ 71*)—Right of Way—Purchase—Easement of Vendor.—A railroad buying a right of way through a farm, across which was an established pathway, then and for many years before used by the grantors and by occupants of several small houses on the farm in passing to and from the land on the two sides thereof and as an outlet to the public road, takes it subject to their right to use the pathway; especially where the deed recognizes the existence of easements of private way left appurtenant to the land retained by the grantors, by provision for erection and maintenance by the grantee of suitable and necessary crossings.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 167; Dec. Dig. § 71.* 11 Va.-W. Va. Enc. Dig. 553.]

2. Railroad (§ 113 (2)*)—Obstruction of Pathway—Duty of Rightful User.—Where a railroad, by removing a gate, erecting a wire fence, and building steps over it, obstructs a pathway across its right of way, which an occupant of adjoining land has an absolute right to use, it owes him at least the duty to use due care to so construct the obstruction that it shall be reasonably safe, as compared with the gateway, for his use.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 353; Dec. Dig. § 113 (2).* 11 Va.-W. Va. Eng. Dig. 553.]

3. Railroads (§ 114 (4)*)—Obstruction of Pathway—Injury—Contributory Negligence.—Whether one having a right to use a pathway over a railroad right of way and injured in attempting to get over the

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.